IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8801 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PANCHALIBEN W/O SUNIL VASUDEV RAJPUT (MADRASI)

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 8801 of 2002

MR NM KAPADIA for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/02/2003

ORAL JUDGEMENT

#. By filing this petition, the detenu has challenged her detention order dated 18.7.2002. By the impugned

order, the detenu is detained in exercise of the powers under section 3(1) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "bootlegger" and is required to be detained under the preventive detention, so that, she may not continue with such type of illegal activities.

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, there is a reference of four criminal cases, which are pending against the detenu at Varachha Police Station. It is found that the detenu is illegally transporting liquor and that she is a headstrong lady, and, accordingly, she has been detained by way of preventive detention under the PASA. The detenu has challenged the detention order on various grounds.

#. At the time of hearing of this petition, it is argued by the learned advocate for the detenu that before the impugned order is passed, the detenu had made a representation on 17.6.2002, i.e. about one month prior to the detention order, and copy of the said representation is produced at page 28 in the compilation, wherein she has pointed out that the concerned Police Officer of Varachha Police Station is harassing her and that he is threatening that he will detain her under the PASA. It is submitted by Mr.Kapadia that, at the time of passing the detention order, the detaining authority has not considered the said aspect, and the complaint was prior in time before passing the detention order, yet, there is no reference, in any manner, in the detention order. This aspect is not in dispute, as, there is no reference at all in the detention order about the same. Whether this would be a favourable material or not is a different thing, but this important document was available with the detaining authority at the time when the detention order was passed. Under the circumstances, at least, reference was required to be made in the detention order. By not referring to the said document in the detention order, it can be presumed that the subjective satisfaction is vitiated or the document escaped the notice of the detaining authority while passing the detention order. In any case, when such serious allegation is made by the detenu much prior to the detention order, at least, the said aspect should have found a place in the reasoning part of the detention order.

#. It is required to be noted that, however, in the

affidavit-in-reply, the authority has referred to the said document by saying that, on the basis of the complaint of the detenu, some enquiry was made by the detaining authority through the Assistant Police Commissioner. However, this affidavit-in-reply cannot substitute the original detention order, and, therefore, contents in the original order still remain, by which, it is clear that this aspect is not reflected in the detention order and may be, that it might have escaped the notice of the detaining authority while passing the detention order. In that view of the matter, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 18.7.2002 is quashed and set aside. The detenu Panchaliben w/o Sunil Vasudev Rajput (Madrasi) is ordered to be set at liberty forthwith if she is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)
(pathan)